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Paper No. 16

*In re* Application of Hajime Ito et al.

Appl. No.: 09/699,371

Filed: October 31, 2000

For: VEHICLE INFORMATION PROCESSING METHOD,  
APPARATUS THEREFOR AND VEHICLE  
THEREWITH

Office of the Director  
Group 3600

DECISION ON PETITION TO  
REVIEW RESTRICTION  
REQUIREMENT UNDER  
37 CFR 1.144

This letter is in response to applicants' Petition Under 37 C.F.R. 1.144 and 1.81(c) received November 4, 2002 requesting a review of the requirement for an election of species made October 10, 2001. The petition seeks clarification of whether or not the restriction requirement is proper and requests that the examiner be overruled as to the requirement.

A review of the record indicates that the examiner required an election of species on October 10, 2001 (paper no.2) between a vehicle information system (claims 1, 11, and 21); a vehicle information system (claims 2, 3, 12, and 13); a vehicle communication system (claims 4-8 and 14-18); and a vehicle navigation system (claims 9, 10, 19, and 20). The applicants traversed the restriction, pointing out the supposed errors, and electing the invention of Group I (claims 1, 11, and 21) on December 10, 2001 (paper no. 4). In the next Office Action, mailed January 15, 2002 (paper no. 5) the election of species requirement was made final. The examiner additionally withdrew claims 2-10 and 12-20 as being drawn to the non-elected species. In the amendment of June 13, 2002 (paper no. 8) applicants amended claims 1, 4-11 and 14-21 and requested reconsideration of the finality of the election of species requirement. The examiner maintained the requirement for restriction in the final Office action of July 7, 2002 (paper no.9). It is at this point in the prosecution that the Office received the above-noted petition.

As to the question of whether the restriction requirement is proper, the criteria for a proper restriction is whether the inventions are independent (i.e. species under a genus which are not usable together as disclosed) MPEP 802.01, and whether they are patentably distinct MPEP 806.04(h). Since the claims of the different species all depend from claim 1, they all contain the limitations of claim 1. This would preclude them from being patentably distinct over each other. The examiner has pointed out how the different groups add different limitations to claim 1, but has not demonstrated how they are patentably distinct from each other.

The requirement for election of species of October 10, 2001 is hereby vacated.

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Art Unit: 3661

The petition is GRANTED.

The application will be returned to the examiner for immediate action consistent with this decision, including the preparation of a non-final Office action.



Donald Hajec,  
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